

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

THOMAS C. and PAMELA McINTOSH

PLAINTIFFS

V.

CIVIL ACTION NO.1:06CV1080 LTS-RHW

**STATE FARM FIRE and CASUALTY COMPANY, and
FORENSIC ANALYSIS & ENGINEERING CO., and
E. A. RENFROE & COMPANY, INC.**

DEFENDANTS

OPINION AND ORDER CONCERNING EVIDENCE OF OUT-OF-STATE CONDUCT

The Court has before it the motion [1008] of State Farm Fire & Casualty Company (State Farm) to exclude evidence of any out-of-state conduct from consideration in connection with the issue of punitive damages.

State Farm relies heavily on the holding of *State Farm Mut. Automobile Ins. Co. v. Campbell*, 538 U.S. 408, 123 S.Ct. 1513, 155 L.Ed2d 585 (2003), the controlling authority on this issue. *Campbell* involved a State Farm automobile insurance policy. A jury found that State Farm mishandled a claim against its insured and made an award of \$1 million in actual damages and \$45 million in punitive damages for this misconduct. Part of the evidence offered in support of the claim for punitive damages was expert testimony concerning State Farm's nationwide claims handling practices over many years and the management decisions behind those practices. The Court reversed the \$45 million punitive damage award on the grounds that the award was so excessive that it violated State Farm's right to due process under the Fourteenth Amendment. The Court also discussed the use of out-of-state conduct as evidence in support of a claim for punitive damages.

Campbell does not establish a prohibition on the use of evidence concerning out-of-state conduct, but the case does restrict the use of this type of evidence by requiring that the out-of-state conduct "have a nexus to the specific harm suffered by the plaintiff." *Campbell* also requires that great caution be taken in the admission of this type of evidence lest a defendant be subjected to a duplicative punitive damage award.

There are also practical reasons that this type of evidence must be handled with care. Allowing the introduction of out-of-state conduct creates the risk that this evidence will be confusing to the jury and that disputes concerning the nature of this conduct and its propriety may prove to be a distraction from the business of deciding the merits of the plaintiffs' claim for punitive damages. Yet because the out-of-state conduct may have substantial probative value, it is necessary to balance these risks against the nature of this evidence and the degree to which it sheds light on State Farm's conduct in handling the plaintiffs' claims.

State Farm does not specify the evidence it wishes to exclude, and, in light of the *Campbell* opinion, I see no reason for a blanket exclusion of unspecified evidence at this point. I do agree that this is an important issue, and it is one I will decide only on a more fully-developed record. The plaintiffs' response to this motion indicates that the out-of-state conduct at issue concerns State Farm's claims handling practices following a windstorm in Oklahoma. This Oklahoma litigation surfaced briefly in the voir dire of an expert witness in a recent trial.

Given the delicate legal issues and other considerations at stake, I will hold the State Farm motion in abeyance, and I will decide the merits of the issue under the following procedure. Not later than thirty days from the date of this order the plaintiffs shall specify, by filing an appropriate declaration, all evidence (identifying all witnesses, all documents, and any other evidence they may seek to introduce) concerning out-of-state conduct it intends to offer at the trial of this action. Upon receipt of this information State Farm shall make its specific objections to each item of evidence. I will decide the merits of these objections at or before the pre-trial conference, and, if necessary, I will conduct a hearing to decide whether this material should be admitted.

It is so **ORDERED**.

DECIDED this 24th day of April, 2008.

s/ L. T. Senter, Jr.
L. T. SENTER, JR.
SENIOR JUDGE